

Before the  
**COPYRIGHT ROYALTY JUDGES**  
Washington, DC

<i>In re</i>	
<b>DISTRIBUTION OF CABLE ROYALTY FUNDS</b>	<b>Docket No. 16-CRB-0009-CD (2014-2017)</b>
<b>DISTRIBUTION OF SATELLITE ROYALTY FUNDS</b>	<b>Docket No. 16-CRB-0010-SD (2014-2017)</b>

**SETTLING DEVOTIONAL CLAIMANTS' REPLY IN SUPPORT OF  
MOTION TO COMPEL MULTIGROUP CLAIMANTS TO PRODUCE DOCUMENTS**

The Settling Devotional Claimants (“SDC”) submit this Reply in support of their Motion to Compel Multigroup Claimants (“MC”) to Produce Documents. MC has asserted only relevance objections to the two categories of documents sought in the SDC’s motion, but the bar for relevance is low, encompassing evidence that “will have some probable effect on the organization and presentation of” a party’s case. *Jewish War Veterans of the United States of Am., Inc. v. Gates*, 506 F. Supp. 2d 30, 48 (D.D.C. 2007), *aff’d* 279 Fed. App’x 3 (D.C. Cir. 2008). This low bar is clearly met for both categories of documents, as there are a variety of ways the contents of the requested materials could alter the presentation of claims validity challenges to some or all of MC’s claims in these proceedings.

**1. MC Must Produce Information to Resolve Potential Confusion Regarding Titles Claimed for Salem Baptist Church of Chicago, Inc.**

The Judges specifically ordered parties to produce “program information for each claimant (*e.g.*, correct title for each claimed program and other identifying information in cases in which the titles may be confused).” Orders for Further Proceedings, Dkts. 16-CRB-0009 CR, 16-CRB-0010 SD (2014-17), at 3 (Jan. 10, 0222). The first category of production the SDC seek

falls squarely within this scope of claims discovery. Despite the clear requirement for production of such information at this stage of the proceedings, MC's only objection is to relevance, arguing that this information is "beyond the scope of discovery required by the January 10, 2022 order." Ex. A (MC Objections), at Request 10. MC does not appear to object to collecting or producing this material, only to the timing of the request.

The SDC have identified an MC claimant – Salem Baptist Church of Chicago, Inc. – whose programming "titles may be confused" with the programming owned by different entities with similar names. The SDC's request is narrowly tailored, as Salem Baptist Church of Chicago, Inc. should be easily able to identify what stations it aired its programming on. As a Chicago-based entity, it may only air its programming on Chicago-area stations, for example. This identifying information would avoid the possibility of confused claims to programming aired on different stations or in different markets but with similar names.

The SDC have identified at least one other church bearing the name "New Salem Baptist Church," but which MC admits that "MC does not represent." Opp. 2. However, the Memphis-based New Salem Baptist Church states on its website that it airs programming on television. See <https://www.newsalembaptist.com/our-church> ("Through the dynamic preaching of Rev. Ray via radio and television ..."). Because MC does not represent this entity, there is a distinct possibility that any programming it airs bearing its name may be wrongly claimed by MC if MC does not produce distinguishing information required by the Orders for Further Proceedings. MC is claiming the program titles "New Salem Baptist Church," "New Salem Church," "Salem Baptist," "Salem Baptist Church," and "Salem Church," all of which could be confused with programming aired on television by the Memphis-based New Salem Baptist Church. Indeed, MC's opposition argues that these variations on the ministry's name are perfectly plausible

names for programming aired by a ministry with the name “New Salem Baptist Church,” proving the point that programming from these two ministries (as well as other ministries with the same or similar names throughout the nation) could easily be improperly included under the program titles claimed by MC absent the additional detail requested. This demonstrates the potential for confusion, the standard set forth in the Orders for Further Proceeding to require additional identifying information, and MC should be ordered to produce such information.

MC does not assert in its opposition that it has inquired of its claimant and that the information requested does not exist. Indeed, it states that this “information will be compiled and produced” at a later stage of the proceedings, reducing its objection to an argument about the timing of its production only. Opp. 5. For whatever reason, MC appears to have refused to contact its claimant to request this data and wishes to delay communications with its claimant until after claims challenges are resolved. Despite claiming there are other identifying characteristics that might be produced (Opp. 4-5), MC has not offered to produce any such information and did not make such an offer during the parties’ pre-motion correspondence. As a result, the SDC moved to compel the data they believe are the most efficient and simple way to resolve the issue during the claims discovery process, as the Judges directed – with the added benefit of getting an early start on producing data that MC has promised to produce later.

## **2. MC Must Produce Documents Relating to its Authority to File and Apparent Failure to File Claims in 2014.**

The SDC’s second category of documents relate to the core question of whether MC had authority, as a designated agent, to file royalty claims for the years 2015-2017 when it failed to file such claims in 2014 – the first year at issue in these consolidated proceedings. The Judges have never ruled on the effect of that failure to file on the case’s subsequent royalty years (2015-2017). Instead, the ruling in the 2010-13 case was only that the failure to file in 2014 did not

have a bearing on whether authority existed for WSG to file in earlier years (2010-2013). Ruling and Order Regarding Objections to Cable and Satellite Claims, 14-CRB-0010-CD/SD (2010-13) (Oct. 23, 2017) at 5. In this proceeding, the effect of any change in status as a result of events relating to royalty year 2014 certainly does have relevance to whether filings for 2015 and later were authorized. To fully address that argument, the SDC must be granted discovery into what happened in 2014 and later between MC (or its various predecessors-in-interest and alter egos) and the claimants it purports to represent once again.

Despite the representations in its opposition, MC has produced no “new” documents in this matter relating to the authority to file claims for 2015-17 royalties, and it has not answered or resolved the issue through what it has produced.<sup>1</sup> All documents it has produced relating to its representation of its devotional claimants were previously produced in earlier copyright royalty proceedings, and none indicates or acknowledges that MC had authority to file claims for 2015-17. The only representation agreements produced were those signed originally with Worldwide Subsidy Group, LLC approximately two decades ago. The SDC interpret this fact, in combination with MC’s non-objection to producing documents relating to MC’s authority in those royalty years, to mean that no contemporary documents supporting MC’s authority for 2015-17 exist from after the failure to file 2014 claims (which were due in July 2015). The SDC are entitled to rely on the non-objection and associated non-production of additional documents to mean that such documents do not exist. However, the sufficiency on the merits of MC’s already-produced documentation is not the issue before the Judges in this motion, but only whether MC’s objections are valid to requests for documents and communications relating to royalty year 2014.

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<sup>1</sup> The SDC did not (as MC suggests) “acknowledge” in their motion the sufficiency of MC’s production to establish MC’s authority, or that its production “corroborates its authority.” *See* Opp. 6.

With respect to the documents sought in this motion – communications, documents, and agreements relating to the authority to file, failure to file, and response to the failure to file in royalty year 2014 – the only objection MC articulates in its opposition is that they are “simply irrelevant” because MC is not making claims for royalty year 2014. Opp. 5. This argument misses the entire point of the requests, which is to determine if the events relating to royalty year 2014 shed light on whether MC retained or regained authority to file that might have been lost either before or after the 2014 filing deadline was missed in July 2015. The SDC cannot know at this point exactly what these documents will show, but there is no doubt that their contents could contain relevant material – all that is required to clear the low bar for relevance during discovery. *Smith v. Schlesinger*, 513 F.2d 462, 472 (D.C. Cir. 1975) (“[T]he test for relevancy for purposes of discovery ... is broader than the test for admissibility at trial.”). To obtain discovery, the SDC need not prove that the requested material (which they have not yet been able to review) *will* contain admissible evidence that will be decisive in a claims challenge, but only that it “*could* be relevant to the presentation” of its arguments. *Id.* (emphasis added). MC has presented no argument or evidence that would make the need for this discovery irrelevant, as it has not demonstrated that its authority survived no matter what was said or done between MC and its claimants in relation to royalty year 2014.

There is reason to believe that the documents requested relating to the events surrounding the non-filing of 2014 claims by MC or WSG will contain information about the status of the claimants’ choice of an agent in these proceedings. MC carefully states that no “terminations of authority” exist only with respect to “Multigroup Claimants authority to file claims relating to 2015, 2016, and 2017 royalties,” implying that it has avoided searching for or producing documents that would indicate a termination of authority that took place for 2014 royalties. Yet

MC has also represented that all of its claimants only signed representation agreements with Worldwide Subsidy Group, LLC, all of which were signed circa 2001. MC Replies in Support of Motion for Partial Distribution of 2015-17 Cable & Satellite Royalties, Dkt. Nos. 16-CRB-0009-CD & 16-CRB-0010-SD, at 2 (Aug. 13, 2021).<sup>2</sup> In order for those agreements to remain in effect for the 2015-17 royalty years, they would need to have been in effect without any terminations or breaks in authority throughout the intervening years, but MC has refused to produce documents relating to whether it retained authority throughout the period when 2014 claims would have been filed. If its authority was abrogated or terminated in connection with royalty year 2014, the lack of terminations in later years is meaningless because MC has not produced evidence of any subsequent acquisition (or re-acquisition) of representational authority.

Beyond any inferences that can be drawn from MC's careful phrasing of its arguments or objections, the relevance of documents sought for royalty year 2014 is self-evident. If MC truly retained unbroken agency authority to file royalty claims in 2014, then its failure to file in that year is clearly a remarkable – and material – event. The SDC's references to an agent's duties (both fiduciary duties and duties to seek consent for agency assignments) were not raised to litigate questions of MC's potential breaches of those duties in this motion, but to establish that the requested documents likely exist which discuss the status of MC's agency authority as a result of the material event of a non-filing in royalty year 2014. “As a general rule, an agent has a duty to disclose material matters to his or her principal.” *O’Riordan v. Fed. Kemper Life Assurance Co.*, 36 Cal.4th 281, 288 (2005); Cal Civ. Code § 2332 (requiring communication between agent and principal as a matter of “good faith and the exercise of ordinary care and

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<sup>2</sup> It does appear from MC's production that these nearly 20-year-old documents are the only “representation agreements” it has produced for claimants in the devotional category.

diligence’’)). Thus, there is a reasonable expectation that MC had correspondence with the claimants to discuss its failure to submit royalty year 2014 filings.

What the SDC cannot know until documents are produced is whether that discussion was prospective (in which the claimants terminated MC’s authority to file starting in 2014) or retrospective (in which MC informed the claimants of its failure to claim potentially millions of dollars of royalties on their behalf, and may have been terminated or limited in its authority as a result), or whether MC deemed it had no obligation to file 2014 claims, which could challenge the very legitimacy of its authority in subsequent years. Any of these circumstances, or some other permutation or variation thereof (including the possibility that authority was re-confirmed following the failure to file), will shed light on the status of MC’s continuing authority (or lack/limitation thereof), and the contents of the requested documents will undoubtedly have some effect on the presentation of any claims challenge to MC’s purported authority. As the D.C. Circuit previously held, in claims discovery a party must “produce evidence that *might undermine* its assertion of authority to represent” a claimant. *Independent Producers Group v. Librarian of Congress*, 792 F.3d 132, 139 (D.C. Cir. 2015) (emphasis added). The SDC have articulated a reasonable basis to believe that the documents relating to royalty year 2014 claims will address, in some way, the existence and status of MC’s authority in subsequent years.

### **Conclusion**

The SDC’s motion to compel should be granted, and MC should be ordered to produce the requested materials well in advance of the May 4, 2022 deadline for the parties to file claims challenges.

April 4, 2022

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# Proof of Delivery

I hereby certify that on Monday, April 04, 2022, I provided a true and correct copy of the SDC Reply in Support of Motion to Compel MC to Produce Documents to the following:

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Signed: /s/ Michael A Warley